

# COMMITTEE REPORT

## MADAM PRESIDENT:

**The Senate Committee on Education and Career Development, to which was referred House Bill No. 1462, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:**

- 1           Page 1, between the enacting clause and line 1, begin a new  
2           paragraph and insert:  
3           "SECTION 1. IC 4-6-2-1.5, AS AMENDED BY P.L.78-2005,  
4           SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
5           JULY 1, 2009]: Sec. 1.5. (a) Whenever any state governmental official  
6           or employee, whether elected or appointed, is made a party to a suit,  
7           and the attorney general determines that said suit has arisen out of an  
8           act which such official or employee in good faith believed to be within  
9           the scope of the official's or employee's duties as prescribed by statute  
10          or duly adopted regulation, the attorney general shall defend such  
11          person throughout such action.  
12          (b) Whenever a teacher (as defined in IC 20-18-2-22) is made a  
13          party to a civil suit, and the attorney general determines that the suit  
14          has arisen out of an act that the teacher in good faith believed was  
15          within the scope of the teacher's duties in enforcing discipline policies  
16          developed under IC 20-33-8-12, the attorney general shall defend the  
17          teacher throughout the action.  
18          **(c) Not later than August 15 of each year:**  
19               **(1) the attorney general shall draft; and**  
20               **(2) the state superintendent of public instruction shall**

1           **disseminate in:**

2           **(A) written;**

3           **(B) electronic; or**

4           **(C) other;**

5           **form;**

6           **a notice to each teacher concerning the teacher's qualified**  
 7           **immunity under IC 20-33-8-8(b)(3) and rights under this section.**

8           ~~(c)~~ **(d)** Whenever a school corporation (as defined in IC 20-26-2-4)  
 9           is made a party to a civil suit and the attorney general determines that  
 10          the suit has arisen out of an act authorized under IC 20-30-5-0.5 or  
 11          IC 20-30-5-4.5, the attorney general shall defend the school corporation  
 12          throughout the action.

13          ~~(d)~~ **(e)** A determination by the attorney general under subsection (a),  
 14          (b), or (c) shall not be admitted as evidence in the trial of any such civil  
 15          action for damages.

16          ~~(e)~~ **(f)** Nothing in this chapter shall be construed to deprive any such  
 17          person of the person's right to select counsel of the person's own choice  
 18          at the person's own expense."

19          Page 3, delete lines 21 through 42, begin a new paragraph and  
 20          insert:

21          "SECTION 3. IC 13-19-5-3, AS AMENDED BY P.L.221-2007,  
 22          SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 23          JULY 1, 2009]: Sec. 3. (a) The authority shall do the following under  
 24          this chapter:

25               (1) Be responsible for the management of all aspects of the  
 26               program.

27               (2) Prepare and provide program information.

28               (3) Negotiate the negotiable aspects of each financial assistance  
 29               agreement and submit the agreement to the budget agency for  
 30               approval.

31               (4) Sign each financial assistance agreement.

32               (5) Review each proposed project and financial assistance  
 33               agreement to determine if the project meets the credit, economic,  
 34               or fiscal criteria established by guidelines of the authority.

35               (6) Periodically inspect or cause to be inspected projects to  
 36               determine compliance with this chapter.

37               (7) Conduct or cause to be conducted an evaluation concerning  
 38               the financial ability of a political subdivision to:

- 1 (A) pay a loan or other financial assistance and other
- 2 obligations evidencing loans or other financial assistance, if
- 3 required to be paid; and
- 4 (B) otherwise comply with terms of the financial assistance
- 5 agreement.
- 6 (8) Evaluate or cause to be evaluated the technical aspects of the
- 7 political subdivision's:
  - 8 (A) environmental assessment of potential brownfield
  - 9 properties;
  - 10 (B) proposed remediation; and
  - 11 (C) remediation activities conducted on brownfield properties.
- 12 (9) Inspect or cause to be inspected remediation activities
- 13 conducted under this chapter.
- 14 (10) Act as a liaison to the United States Environmental
- 15 Protection Agency regarding the program.
- 16 (11) Be a point of contact for political subdivisions concerning
- 17 questions about the program.
- 18 (12) Enter into memoranda of understanding, as necessary, with
- 19 the department and the budget agency concerning the
- 20 administration and management of the fund and the program.
- 21 (b) The authority may do the following under this chapter:
  - 22 (1) Undertake activities to make private environmental insurance
  - 23 products available to encourage and facilitate the cleanup and
  - 24 redevelopment of brownfield properties.
  - 25 (2) Enter into agreements with political subdivisions to manage
  - 26 any of the following conducted on brownfield properties:
    - 27 (A) Environmental assessment activities.
    - 28 (B) Environmental remediation activities.
  - 29 (c) The authority may:
    - 30 (1) negotiate with;
    - 31 (2) select; and
    - 32 (3) contract with;
  - 33 one (1) or more insurers to provide insurance products as described in
  - 34 subsection (b)(1).
  - 35 (d) Notwithstanding IC 13-23, IC 13-24-1, and IC 13-25-4, the
  - 36 authority is not liable for any contamination addressed by the authority
  - 37 under an agreement under subsection (b)(2) unless existing
  - 38 contamination on the brownfield is exacerbated due to gross negligence

or intentional misconduct by the authority.

(e) For purposes of subsection (d), reckless, willful, or wanton misconduct constitutes gross negligence.

(f) The authority is entitled to the same governmental immunity afforded a political subdivision under ~~IC 34-13-3-3(23)~~ **IC 34-13-3-3(22)** for any act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield under an agreement under subsection (b)(2).

SECTION 4. IC 20-19-3-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9. The department shall establish and maintain a searchable data base of information concerning employees and former employees of a school corporation who have been reported to the department under IC 20-28-5-8. The department shall make the data base available to the public.**

SECTION 5. IC 20-26-5-10, AS ADDED BY P.L.1-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) A school corporation, including a school township **and a charter school**, shall adopt a policy concerning criminal history information for individuals who:

(1) apply for:

(A) employment with the school corporation; or

(B) employment with an entity with which the school corporation contracts for services;

(2) seek to enter into a contract to provide services to the school corporation; or

(3) are employed by an entity that seeks to enter into a contract to provide services to the school corporation;

if the individuals are likely to have direct, ongoing contact with children within the scope of the individuals' employment.

(b) A school corporation, including a school township **and a charter school**, shall administer a policy adopted under this section uniformly for all individuals to whom the policy applies. A policy adopted under this section ~~may~~ **must** require ~~any of the following: that the school corporation conduct an expanded criminal history check~~

~~(1) The school corporation, including a school township, may request limited criminal history information concerning each applicant for noncertificated employment or certificated~~

employment from a local or state law enforcement agency before or not later than three (3) months after the applicant's employment by the school corporation.

(2) Each individual hired for noncertificated employment or certificated employment may be required to provide a written consent for the school corporation to request ~~under IC 10-13-3~~ **limited criminal history information or a national criminal history background an expanded criminal history** check concerning the individual before or not later than three (3) months after the individual's employment by the school corporation. The school corporation may require the individual to provide a set of fingerprints and pay any fees required for a ~~national criminal history background~~ **the expanded criminal history** check.

(3) Each individual hired for noncertificated employment may be required at the time the individual is hired to submit a certified copy of the individual's limited criminal history (as defined in IC 10-13-3-11) to the school corporation.

(4) Each individual hired for noncertificated employment may be required at the time the individual is hired to:

(A) submit a request to the Indiana central repository for limited criminal history information under IC 10-13-3;

(B) obtain a copy of the individual's limited criminal history; and

(C) submit to the school corporation the individual's limited criminal history and a document verifying a disposition (as defined in IC 10-13-3-7) that does not appear on the limited criminal history.

(5) Each applicant for noncertificated employment or certificated employment may be required at the time the individual applies to answer questions concerning the individual's ~~limited~~ **expanded criminal history check**. The failure to answer honestly questions asked under this ~~subdivision~~ **subsection** is grounds for termination of the employee's employment.

(6) Each individual that:

(A) seeks to enter into a contract to provide services to a school corporation; or

(B) is employed by an entity that seeks to enter into a contract with a school corporation;

may be required at the time the contract is formed to comply with the procedures described in subdivisions (2), (4), and (5). An individual who is employed by an entity that seeks to enter into a contract with a school corporation to provide student services in which the entity's employees have direct contact with students in a school based program may be required to provide the consent described in subdivision (2) or the information described in subdivisions (4) and (5) to either the individual's employer or the school corporation. Failure to comply with subdivisions (2), (4), and (5), as required by the school corporation, is grounds for termination of the contract. An entity that enters into a contract with a school corporation to provide student services in which the entity's employees have direct contact with students in a school based program is allowed to obtain limited criminal history information or a national criminal history background check regarding the entity's applicants or employees in the same manner that a school corporation may obtain the information.

(c) If an individual is required to obtain a limited criminal history under this section, the individual is responsible. **The applicant is responsible** for all costs associated with obtaining the limited **expanded** criminal history check. **An applicant may not be required by a school corporation to obtain an expanded criminal history check more than one (1) time during a five (5) year period.**

~~(d)~~ (c) Information obtained under this section must be used in accordance with ~~IC 10-13-3-29: law.~~

Page 4, delete lines 1 through 13.

Page 4, line 16, delete "(a)".

Page 4, delete lines 18 through 26, begin a new line block indented and insert:

"(1) a:

(A) search of the records maintained by all counties in Indiana in which the individual who is the subject of the background check resided;

(B) search of the records maintained by all counties or similar governmental units in another state, if the individual who is the subject of the background check resided in another state; and

(C) check of:

- 1                   (i) sex offender registries in all fifty (50) states; or  
 2                   (ii) the national sex offender registry maintained by the  
 3                   United States Department of Justice; or  
 4           (2) a:  
 5                   (A) national criminal history background check (as defined  
 6                   in IC 10-13-3-12); and  
 7                   (B) check of:  
 8                   (i) sex offender registries in all fifty (50) states; or  
 9                   (ii) the national sex offender registry maintained by the  
 10                  United States Department of Justice."

11           Page 4, delete lines 27 through 42.

12           Page 5, delete lines 1 through 21.

13           Page 5, line 24, delete "2009]:Sec." and insert "2009]: Sec."

14           Page 6, delete lines 39 through 42.

15           Page 7, delete lines 1 through 34, begin a new paragraph and insert:

16           "SECTION 10. IC 20-33-8-8, AS ADDED BY P.L.1-2005,  
 17           SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 18           JULY 1, 2009]: Sec. 8. (a) Student supervision and the desirable  
 19           behavior of students in carrying out school purposes is the  
 20           responsibility of:

- 21                   (1) a school corporation; and  
 22                   (2) the students of a school corporation.

23           (b) In all matters relating to the discipline and conduct of students,  
 24           school corporation personnel:

- 25                   (1) stand in the relation of parents to the students of the school  
 26                   corporation; ~~and~~  
 27                   (2) have the right to take any disciplinary action necessary to  
 28                   promote student conduct that conforms with an orderly and  
 29                   effective educational system, subject to this chapter; **and**  
 30                   **(3) have qualified immunity with respect to a disciplinary**  
 31                   **action taken to promote student conduct under subdivision (2)**  
 32                   **if the action is taken in good faith and is reasonable.**

33           (c) Students must:

- 34                   (1) follow responsible directions of school personnel in all  
 35                   educational settings; and  
 36                   (2) refrain from disruptive behavior that interferes with the  
 37                   educational environment."

38           Page 8, delete lines 6 through 42, begin a new paragraph and insert:

1        **"(d) If an individual removes a student from a class under**  
 2        **subsection (c), the principal may place the student in another**  
 3        **appropriate class or placement or into inschool suspension. The**  
 4        **principal may not return the student to the class from which the**  
 5        **student was removed until the principal has met with the student,**  
 6        **the student's teacher, and the student's parents to determine an**  
 7        **appropriate behavior plan for the student. If the student's parents**  
 8        **do not meet with the principal and the student's teacher within a**  
 9        **reasonable amount of time, the student may be moved to another**  
 10       **class at the principal's discretion.**

11       SECTION 11. IC 34-6-2-38, AS AMENDED BY P.L.1-2007,  
 12       SECTION 223, IS AMENDED TO READ AS FOLLOWS  
 13       [EFFECTIVE JULY 1, 2009]: Sec. 38. (a) "Employee" and "public  
 14       employee", for purposes of section 91 of this chapter, IC 34-13-2,  
 15       IC 34-13-3, IC 34-13-4, and IC 34-30-14, mean a person presently or  
 16       formerly acting on behalf of a governmental entity, whether  
 17       temporarily or permanently or with or without compensation, including  
 18       members of boards, committees, commissions, authorities, and other  
 19       instrumentalities of governmental entities, volunteer firefighters (as  
 20       defined in IC 36-8-12-2), and elected public officials.

21       (b) The term also includes attorneys at law whether employed by the  
 22       governmental entity as employees or independent contractors and  
 23       physicians licensed under IC 25-22.5 and optometrists who provide  
 24       medical or optical care to confined offenders (as defined in IC 11-8-1)  
 25       within the course of their employment by or contractual relationship  
 26       with the department of correction. However, the term does not include:

- 27       (1) an independent contractor (other than an attorney at law, a
- 28       physician, or an optometrist described in this section);
- 29       (2) an agent or employee of an independent contractor;
- 30       (3) a person appointed by the governor to an honorary advisory or
- 31       honorary military position; or
- 32       (4) a physician licensed under IC 25-22.5 with regard to a claim
- 33       against the physician for an act or omission occurring or allegedly
- 34       occurring in the physician's capacity as an employee of a hospital.

35       ~~(c) A physician licensed under IC 25-22.5 who is an employee of a~~  
 36       ~~governmental entity (as defined in section 49 of this chapter) shall be~~  
 37       ~~considered a public employee for purposes of IC 34-13-3-3(21).~~

38       ~~(d)~~ (c) For purposes of IC 34-13-3 and IC 34-13-4, the term includes



a person that engages in an act or omission before July 1, 2004, in the person's capacity as:

- (1) a contractor under IC 6-1.1-4-32 (repealed);
- (2) an employee acting within the scope of the employee's duties for a contractor under IC 6-1.1-4-32 (repealed);
- (3) a subcontractor of the contractor under IC 6-1.1-4-32 (repealed) that is acting within the scope of the subcontractor's duties; or
- (4) an employee of a subcontractor described in subdivision (3) that is acting within the scope of the employee's duties.

SECTION 12. IC 34-13-3-3, AS AMENDED BY P.L.47-2006, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following:

- (1) The natural condition of unimproved property.
- (2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose that is not foreseeable.
- (3) The temporary condition of a public thoroughfare or extreme sport area that results from weather.
- (4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.
- (5) The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme sport area are marked with:
  - (A) a set of rules governing the use of the extreme sport area;
  - (B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and
  - (C) a statement that the extreme sport area may be used only by persons operating extreme sport equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

- (6) The initiation of a judicial or an administrative proceeding.
- (7) The performance of a discretionary function; however, the provision of medical or optical care as provided in IC 34-6-2-38

- 1 shall be considered as a ministerial act.
- 2 (8) The adoption and enforcement of or failure to adopt or enforce
- 3 a law (including rules and regulations), unless the act of
- 4 enforcement constitutes false arrest or false imprisonment.
- 5 (9) An act or omission performed in good faith and without
- 6 malice under the apparent authority of a statute which is invalid
- 7 if the employee would not have been liable had the statute been
- 8 valid.
- 9 (10) The act or omission of anyone other than the governmental
- 10 entity or the governmental entity's employee.
- 11 (11) The issuance, denial, suspension, or revocation of, or failure
- 12 or refusal to issue, deny, suspend, or revoke any permit, license,
- 13 certificate, approval, order, or similar authorization, where the
- 14 authority is discretionary under the law.
- 15 (12) Failure to make an inspection, or making an inadequate or
- 16 negligent inspection, of any property, other than the property of
- 17 a governmental entity, to determine whether the property
- 18 complied with or violates any law or contains a hazard to health
- 19 or safety.
- 20 (13) Entry upon any property where the entry is expressly or
- 21 impliedly authorized by law.
- 22 (14) Misrepresentation if unintentional.
- 23 (15) Theft by another person of money in the employee's official
- 24 custody, unless the loss was sustained because of the employee's
- 25 own negligent or wrongful act or omission.
- 26 (16) Injury to the property of a person under the jurisdiction and
- 27 control of the department of correction if the person has not
- 28 exhausted the administrative remedies and procedures provided
- 29 by section 7 of this chapter.
- 30 (17) Injury to the person or property of a person under supervision
- 31 of a governmental entity and who is:
- 32 (A) on probation; or
- 33 (B) assigned to an alcohol and drug services program under
- 34 IC 12-23, a minimum security release program under
- 35 IC 11-10-8, a pretrial conditional release program under
- 36 IC 35-33-8, or a community corrections program under
- 37 IC 11-12.
- 38 (18) Design of a highway (as defined in IC 9-13-2-73), toll road

project (as defined in IC 8-15-2-4(4)), tollway (as defined in IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the claimed loss occurs at least twenty (20) years after the public highway, toll road project, tollway, or project was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

(19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

(20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under ~~IC 20-33-8-7(b)~~; **IC 20-33-8-12**.

~~(21) An error resulting from or caused by a failure to recognize the year 1999, 2000, or a subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date, that is produced, calculated, or generated by:~~

~~(A) a computer;~~

~~(B) an information system; or~~

~~(C) equipment using microchips;~~

~~that is owned or operated by a governmental entity. However, this subdivision does not apply to acts or omissions amounting to gross negligence, willful or wanton misconduct, or intentional misconduct. For purposes of this subdivision, evidence of gross negligence may be established by a party by showing failure of a governmental entity to undertake an effort to review, analyze, remediate, and test its electronic information systems or by showing failure of a governmental entity to abate, upon notice, an electronic information system error that caused damage or loss. However, this subdivision expires June 30, 2003.~~

~~(22)~~ **(21)** An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.

~~(23)~~ **(22)** An act taken to investigate or remediate hazardous

1 substances, petroleum, or other pollutants associated with a  
 2 brownfield (as defined in IC 13-11-2-19.3) unless:

- 3 (A) the loss is a result of reckless conduct; or  
 4 (B) the governmental entity was responsible for the initial  
 5 placement of the hazardous substances, petroleum, or other  
 6 pollutants on the brownfield.

7 SECTION 13. IC 34-30-2-84.7 IS ADDED TO THE INDIANA  
 8 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 9 [EFFECTIVE JULY 1, 2009]: **Sec. 84.7. IC 20-33-8-8 (Concerning**  
 10 **school corporation personnel who take reasonable actions**  
 11 **concerning school discipline).".**

12 Page 9, delete lines 1 through 26.

13 Renumber all SECTIONS consecutively.

(Reference is to HB 1462 as reprinted February 21, 2009.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 10, Nays 0.

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**Lubbers**

**Chairperson**